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We have, as a final note considered the remediable aspects of the instant case as far as the law and the circumstances would allow and permit.

IN VIEW OF THE FOREGOING PREMISES, the appealed decision is hereby **AFFIRMED** with modifications:

1. Ordering private respondents to execute a Deed of Absolute Sale over Lot No. 800-A-1-A at a price of P170.00 per square meter within thirty (30) days from finality of the decision;

2. Ordering private respondents to reimburse petitioner the amount of P63,053.93 with legal interest within 30 days from finality of the decision.

Without pronouncement as to costs.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 102223. August 22, 1996]

COMMUNICATION MATERIALS AND DESIGN, INC., ASPAC MULTI-TRADE, INC., (formerly ASPAC-ITEC PHILIPPINES, INC.) and FRANCISCO S. AGUIRRE, *petitioners, vs.* THE COURT OF APPEALS, ITEC INTERNATIONAL, INC., and ITEC, INC., *respondents.*

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SYLLABUS

1. **COMMERCIAL LAW; CORPORATION CODE; FOREIGN CORPORATION; HAS NO LEGAL EXISTENCE WITHIN A STATE IN WHICH IT IS FOREIGN.**— Generally, a "foreign corporation" has no legal existence within the state in which it is foreign. This proceeds from the principle that juridical existence of a corporation is confined within the territory of the state under whose laws it was incorporated and organized, and it has no legal status beyond such territory. Such foreign corporation may be excluded by any other state from doing business within its limits, or conditions may be imposed on the exercise of such privileges [See Secs. 123 and 133, Corporate Code of the Philippines.]

2. **ID.; ID; ID.; REQUIRED TO OBTAIN A LICENSE BEFORE DOING BUSINESS IN THE PHILIPPINES; PURPOSE THEREOF.**— Before a foreign corporation can transact business in this country, it must first obtain a license to transact business in the Philippines, and a certificate from the appropriate government agency. If it transacts business in the Philippines without such a license, it shall not be permitted to maintain or intervene in any action, suit, or proceeding in any court or administrative agency of the Philippines, but it may be sued on any valid cause of action recognized under Philippine laws. [See Secs. 123 and 133, Corporation Code of the Philippines.] In a long line of decisions, this Court has not altogether prohibited a foreign corporation not licensed to do business in the Philippines from suing or maintaining an action in Philippine Courts. What it seeks to prevent is a foreign corporation doing business in the Philippines without a license from gaining access to Philippine Courts. The purpose of the law in requiring that foreign corporations doing business in the Philippines be licensed to do so and that they appoint an agent for

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service of process is to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts. The object is not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking steps necessary to render it amenable to suit in the local courts. The implication of the law is that it was never the purpose of the legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, and thus, in effect, to permit persons to avoid their contracts made with such foreign corporations.

3. **ID.; ID.; ID.; ALLOWED TO SUE IN PHILIPPINE COURTS ALTHOUGH NOT AUTHORIZED TO DO BUSINESS HERE.**— A foreign corporation doing business in the Philippines may sue in Philippine Courts although not authorized to do business here against a Philippine citizen or entity who had contracted with and benefited by said corporation. To put it in another way, a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it. And the doctrine of estoppel to deny corporate existence applies to a foreign as well as to domestic corporations. One who has dealt with a corporation of foreign origin as a corporate entity is estopped to deny its corporate existence and capacity. The principle will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes chiefly in cases where such person has received the benefits of the contract. The rule is deeply rooted in the time-honored axiom of *Commodum ex injuria sua non habere debet* - no person ought to derive any advantage of his own wrong. This is as it should be for as mandated by law, "every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. The

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doctrine of lack of capacity to sue based on the failure to acquire a local license is based on considerations of sound public policy. The license requirement was imposed to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts. It was never intended to favor domestic corporations who enter into solitary transactions with unwary foreign firms and then repudiate their obligations simply because the latter are not licensed to do business in this country.

4. **ID.; ID.; CORPORATE ACTS; CHARACTERIZED BY UTMOST GOOD FAITH AND FAIRNESS.**— Corporations act through agents like directors and officers. Corporate dealings must be characterized by utmost good faith and fairness. Corporations cannot just feign ignorance of the legal rules as in most cases, they are manned by sophisticated officers with tried management skills and legal experts with practiced eye on legal problems. Each party to a corporate transaction is expected to act with utmost candor and fairness and, thereby allow a reasonable proportion between benefits and expected burdens. This is a norm which should be observed where one or the other is a foreign entity venturing in a global market.

5. **CIVIL LAW; CONTRACTS; PARTIES ARE CHARGED WITH THE KNOWLEDGE OF EXISTING LAWS.**— The parties are charged with knowledge of the existing law at the time they enter into a contract and at the time it is to become operative. (*Twiehaus v. Rosner*, 245 SW2d 107; *Hall v. Bucher*, 227 SW 2d 98). Moreover, a person is presumed to be more knowledgeable about his own state law than his alien or foreign contemporary.

APPEARANCES OF COUNSEL

Reynaldo A. Dario for petitioners.

Oreta & Berenguer for private respondents.

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DECISION

TORRES, JR., *J.*:

Business Corporations, according to Lord Coke, "have no souls." They do business peddling goods, wares or even services across national boundaries in "souless forms" in quest for profits albeit at times, unwelcomed in these strange lands venturing into uncertain markets and, the risk of dealing with wily competitors.

This is one of the issues in the case at bar.

Contested in this petition for review on Certiorari is the Decision of the Court of Appeals on June 7, 1991, sustaining the RTC Order dated February 22, 1991, denying the petitioners' Motion to Dismiss, and directing the issuance of a writ of preliminary injunction, and its companion Resolution of October 9, 1991, denying the petitioners' Motion for Reconsideration.

Petitioners COMMUNICATION MATERIALS AND DESIGN, INC., (CMDI, for brevity) and ASPAC MULTI-TRADE INC., (ASPAC, for brevity) are both domestic corporations, while petitioner Francisco S. Aguirre is their President and majority stockholder. Private Respondents ITEC, INC. and/or ITEC, INTERNATIONAL, INC. (ITEC, for brevity) are corporations duly organized and existing under the laws of the State of Alabama, United States of America. There is no dispute that ITEC is a foreign corporation not licensed to do business in the Philippines.

On August 14, 1987, ITEC entered into a contract with petitioner ASPAC referred to as "Representative Agreement."[1] Pursuant to the contract, ITEC engaged ASPAC as its "exclusive representative" in the Philippines for the sale of

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[1] Annex "A", Complaint of Plaintiff ITEC, Inc., pp. 98-106, *Rollo*.

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ITEC's products, in consideration of which, ASPAC was paid a stipulated commission. The agreement was signed by G.A. Clark and Francisco S. Aguirre, presidents of ITEC and ASPAC respectively, for and in behalf of their companies.[2] The said agreement was initially for a term of twenty-four months. After the lapse of the agreed period, the agreement was renewed for another twenty-four months.

Through a "License Agreement"[3] entered into by the same parties on November 10, 1988, ASPAC was able to incorporate and use the name "ITEC" in its own name. Thus, ASPAC Multi-Trade, Inc. became legally and publicly known as ASPAC-ITEC (Philippines).

By virtue of said contracts, ASPAC sold electronic products, exported by ITEC, to their sole customer, the Philippine Long Distance Telephone Company, (PLDT, for brevity).

To facilitate their transactions, ASPAC, dealing under its new appellation, and PLDT executed a document entitled "PLDT-ASPAC/ITEC PROTOCOL"[4] which defined the project details for the supply of ITEC's Interface Equipment in connection with the Fifth Expansion Program of PLDT.

One year into the second term of the parties' Representative Agreement, ITEC decided to terminate the same, because petitioner ASPAC allegedly violated its contractual commitment as stipulated in their agreements.[5]

ITEC charges the petitioners and another Philippine Corporation, DIGITAL BASE COMMUNICATIONS, INC. (DIGITAL, for brevity), the President of which is likewise petitioner Aguirre, of using knowledge and information of

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[2] *Ibid.*, p. 105.

[3] Annex "B", *Ibid.*, pp. 107-109, *Rollo*.

[4] Annex "C", *Ibid.*, pp. 110-123, *Rollo*.

[5] Annex "E", *Ibid.*, p. 127, *Rollo*.

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ITEC's products specifications to develop their own line of equipment and product support, which are similar, if not identical to ITEC's own, and offering them to ITEC's former customer.

On January 31, 1991, the complaint[6] in Civil Case No. 91-294, was filed with the Regional Trial Court of Makati, Branch 134 by ITEC, INC. Plaintiff sought to enjoin, first, preliminarily and then, after trial, permanently; (1) defendants DIGITAL, CMDI, and Francisco Aguirre and their agents and business associates, to cease and desist from selling or attempting to sell PLDT and to any other party, products which have been copied or manufactured "in like manner, similar or identical to the products, wares and equipment of plaintiff," and (2) defendant ASPAC, to cease and desist from using in its corporate name, letter heads, envelopes, sign boards and business dealings, plaintiff's trademark, internationally known as ITEC; and the recovery from defendants *in solidum*, damages of at least P500,000.00, attorney's fees and litigation expenses.

In due time, defendants filed a motion to dismiss[7] the complaint on the following grounds: (1)That plaintiff has no legal capacity to sue as it is a foreign corporation doing business in the Philippines without the required BOI authority and SEC license, and (2) that plaintiff is simply engaged in forum shopping which justifies the application against it of the principle of "*forum non conveniens*."

On February 8, 1991, the complaint was amended by virtue of which ITEC INTERNATIONAL, INC. was substituted as plaintiff instead of ITEC, INC.[8]

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[6] Complaint of Plaintiff ITEC, Inc., p. 86, *Rollo*.

[7] Motion to Dismiss, p. 216-233, *Rollo*.

[8] Amended Complaint by plaintiff ITEC, Inc., pp. 260-289, *Rollo*.

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In their Supplemental Motion to Dismiss,[9] defendants took note of the amendment of the complaint and asked the court to consider *in toto* their motion to dismiss and their supplemental motion as their answer to the amended complaint.

After conducting hearings on the prayer for preliminary injunction, the court *a quo* on February 22, 1991, issued its Order:[10] (1) denying the motion to dismiss for being devoid of legal merit with a rejection of both grounds relied upon by the defendants in their motion to dismiss, and (2) directing the issuance of a writ of preliminary injunction on the same day.

From the foregoing order, petitioners elevated the case to the respondent Court of Appeals on a Petition for Certiorari and Prohibition[11] under Rule 65 of the Revised Rules of Court, assailing and seeking the nullification and the setting aside of the Order and the Writ of Preliminary Injunction issued by the Regional Trial Court.

The respondent appellate court stated, thus:

"We find no reason whether in law or from the facts of record, to disagree with the (lower court's) ruling. We therefore are unable to find in respondent Judge's issuance of said writ the grave abuse of discretion ascribed thereto by the petitioners.

In fine, We find that the petition *prima facie* does not show that Certiorari lies in the present case and therefore, the petition does not deserve to be given due course.

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[9] Supplemental Motion to Dismiss, pp. 275-282, *Rollo*.

[10] Order of RTC Judge Ignacio Capulong, Branch 164, pp. 283-286, *Rollo*.

[11] Annex "D", Petition for Review, pp. 50-85, *Rollo*.

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WHEREFORE, the present petition should be, as it is hereby, denied due course and accordingly, is hereby dismissed. Costs against the petitioners.

SO ORDERED."[12]

Petitioners filed a motion for reconsideration[13] on June 7, 1991, which was likewise denied by the respondent court.

"WHEREFORE, the present motion for reconsideration should be, as it is hereby, denied for lack of merit. For the same reason, the motion to have the motion for reconsideration set for oral argument likewise should be and is hereby denied.

SO ORDERED."[14]

Petitioners are now before us via Petition for Review on Certiorari[15] under Rule 45 of the Revised Rules of Court.

It is the petitioners' submission that private respondents are foreign corporations actually doing business in the Philippines without the requisite authority and license from the Board of Investments and the Securities and Exchange Commission, and thus, disqualified from instituting the present action in our courts. It is their contention that the provisions of the Representative Agreement, petitioner ASPAC executed with private respondent ITEC, are similarly "highly restrictive" in nature as those found in the agreements which confronted the Court in the case of Top-Weld

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[12] Court of Appeals Decision, dated June 7, 1991, penned by Associate Justice Lorna S. Lombos-dela Fuente, concurred in by Associate Justices Alfredo M. Marigomen and Jainal D. Rasul, pp. 40-46, *Rollo*.

[13] Annex "K", Petition for Review, pp. 359-385, *Rollo*.

[14] Court of Appeals Resolution, dated October 9, 1991, Associate Justice Lorna S. Lombos-Dela Fuente, JJ, concurred by Associate Justices Alfredo M. Marigomen and Jainal Rasul, p. 48, *Rollo*.

[15] Petition for Review, pp. 2-38, *Rollo*.

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Manufacturing, Inc. *vs.* ECED S.A. et al.,[16] as to reduce petitioner ASPAC to a mere conduit or extension of private respondents in the Philippines.

In that case, we ruled that respondent foreign corporations are doing business in the Philippines because when the respondents entered into the disputed contracts with the petitioner, they were carrying out the purposes for which they were created, i.e., to manufacture and market welding products and equipment. The terms and conditions of the contracts as well as the respondents' conduct indicate that they established within our country a continuous business, and not merely one of a temporary character. The respondents could be exempted from the requirements of Republic Act 5455 if the petitioner is an independent entity which buys and distributes products not only of the petitioner, but also of other manufacturers or transacts business in its name and for its account and not in the name or for the account of the foreign principal. A reading of the agreements between the petitioner and the respondents shows that they are highly restrictive in nature, thus making the petitioner a mere conduit or extension of the respondents.

It is alleged that certain provisions of the "Representative Agreement" executed by the parties are similar to those found in the License Agreement of the parties in the Top-Weld case which were considered as "highly restrictive" by this Court. The provisions in point are:

"2.0 Terms and Conditions of Sales.

2.1 Sale of ITEC products shall be at the purchase price set by ITEC from time to time. Unless otherwise expressly agreed to in writing by ITEC the purchase price is net to ITEC and does not include any transportation charges, import charges or taxes into or within the Territory. All orders

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[16] G.R. No. L-44944, August 9, 1985, 138 SCRA 118.

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from customers are subject to formal acceptance by ITEC at its Huntsville, Alabama U.S.A. facility.

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3.0 Duties of Representative

3.1. REPRESENTATIVE SHALL:

3.1.1. Not represent or offer for sale within the Territory any product which competes with an existing ITEC product or any product which ITEC has under active development.

3.1.2. Actively solicit all potential customers within the Territory in a systematic and businesslike manner.

3.1.3. Inform ITEC of all request for proposals, requests for bids, invitations to bid and the like within the Territory.

3.1.4. Attain the Annual Sales Goal for the Territory established by ITEC. The Sales Goals for the first 24 months is set forth on Attachment two (2) hereto. The Sales Goal for additional twelve month periods, if any, shall be sent to the Sales Agent by ITEC at the beginning of each period. These Sales Goals shall be incorporated into this Agreement and made a part hereof.

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6.0. Representative as Independent Contractor

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6.2. When acting under this Agreement REPRESENTATIVE is authorized to solicit sales within the Territory on ITEC's behalf but is authorized to bind ITEC only in its capacity as Representative and no other, and then only to specific customers and on terms and conditions expressly authorized by ITEC in writing."[17]

Aside from the abovestated provisions, petitioners point out the following matters of record, which allegedly

[17] Annex "A", Complaint of plaintiff ITEC, Inc., pp. 98-106, *Rollo*.

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witness to the respondents' activities within the Philippines in pursuit of their business dealings:

"a. While petitioner ASPAC was the authorized exclusive representative for three (3) years, it solicited from and closed several sales for and on behalf of private respondents as to their products only and no other, to PLDT, worth no less than US $ 15 Million (p. 20, tsn, Feb. 18, 1991);

b. Contract No. 1 (Exhibit for Petitioners) which covered these sales and identified by private respondents' sole witness, Mr. Clarence Long, is not in the name of petitioner ASPAC as such representative, but in the name of private respondent ITEC, INC. (p. 20, tsn, Feb. 18, 1991);

c. The document denominated as "PLDT-ASPAC/ITEC PROTOCOL" (Annex C of the original and amended complaints) which defined the responsibilities of the parties thereto as to the supply, installation and maintenance of the ITEC equipment sold under said Contract No. 1 is, as its very title indicates, in the names jointly of the petitioner ASPAC and private respondents;

d. To evidence receipt of the purchase price of US $ 15 Million, private respondent ITEC, Inc. issued in its letter head, a Confirmation of payment dated November 13, 1989 and its Invoice dated November 22, 1989 (Annexes 1 and 2 of the Motion to Dismiss and marked as Exhibits 2 and 3 for the petitioners), both of which were identified by private respondent's sole witness, Mr. Clarence Long (pp. 25-27, tsn, Feb. 18, 1991)."[18]

Petitioners contend that the above acts or activities belie the supposed independence of petitioner ASPAC from private respondents. "The unrebutted evidence on record below for the petitioners likewise reveal the continuous character of doing business in the Philippines by private respondents based on the standards laid down by this Court in Wang

[18] Petition for Review, p. 18, *Rollo*.

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Laboratories, Inc. *vs.* Hon. Rafael T. Mendoza, et al.[19] and again in TOP-WELD. (*supra*)" It thus appears that as the respondent Court of Appeals and the trial court's failure to give credence on the grounds relied upon in support of their Motion to Dismiss that petitioners ascribe grave abuse of discretion amounting to an excess of jurisdiction of said courts.

Petitioners likewise argue that since private respondents have no capacity to bring suit here, the Philippines is not the "most convenient forum" because the trial court is devoid of any power to enforce its orders issued or decisions rendered in a case that could not have been commenced to begin with, such that in insisting to assume and exercise jurisdiction over the case below, the trial court had gravely abused its discretion and even actually exceeded its jurisdiction.

As against petitioner's insistence that private respondent is "doing business" in the Philippines, the latter maintains that it is not.

We can discern from a reading of Section 1 (f) (1) and 1 (f) (2) of the Rules and Regulations Implementing the Omnibus Investments Code of 1987, the following:

"(1) A foreign firm is deemed not engaged in business in the Philippines if it transacts business through middlemen, acting in their own names, such as indebtors, commercial bookers or commercial merchants.

(2) A foreign corporation is deemed not "doing business" if its representative domiciled in the Philippines has an independent status in that it transacts business in its name and for its account."[20]

Private respondent argues that a scrutiny of its Representative Agreement with the Petitioners will show

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[19] G.R. No. 72147, December 1, 1987, 156 SCRA 44.

[20] Comment of private respondent ITEC, Inc., p. 402, *Rollo*.

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that although ASPAC was named as representative of ITEC., ASPAC actually acted in its own name and for its own account. The following provisions are particularly mentioned:

"3.1.7.1. In the event that REPRESENTATIVE imports directly from ITEC, REPRESENTATIVE will pay for its own account; all customs duties and import fees imposed on any ITEC products; all import expediting or handling charges and expenses imposed on ITEC products; and any stamp tax fees imposed on ITEC.

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4.1. As complete consideration and payment for acting as representative under this Agreement, REPRESENTATIVE shall receive a sales commission equivalent to a percentum of the FOB value of all ITEC equipment sold to customers within the territory as a direct result of REPRESENTATIVE's sales efforts."[21]

More importantly, private respondent charges ASPAC of admitting its independence from ITEC by entering and ascribing to provision No. 6 of the Representative Agreement.

"6.0. Representative as Independent Contractor

6.1. When performing any of its duties under this Agreement, REPRESENTATIVE shall act as an independent contractor and not as an employee, worker, laborer, partner, joint venturer of ITEC as these terms are defined by the laws, regulations, decrees or the like of any jurisdiction, including the jurisdiction of the United States, the state of Alabama and the Territory."[22]

Although it admits that the Representative Agreement contains provisions which both support and belie the independence of ASPAC, private respondent echoes the respondent court's finding that the lower court did not commit

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[21] Annex "A", Complaint of ITEC, Inc., p. 101, *Rollo*.

[22] *Ibid.*, p. 102.

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grave abuse of discretion nor acted in excess of jurisdiction when it found that the ground relied upon by the petitioners in their motion to dismiss does not appear to be indubitable.[23]

The issues before us now are whether or not private respondent ITEC is an unlicensed corporation doing business in the Philippines, and if it is, whether or not this fact bars it from invoking the injunctive authority of our courts.

Considering the above, it is necessary to state what is meant by "doing business" in the Philippines. Section 133 of the Corporation Code, provides that "No foreign corporation, transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine Courts or administrative tribunals on any valid cause of action recognized under Philippine laws."[24]

Generally, a "foreign corporation" has no legal existence within the state in which it is foreign. This proceeds from the principle that juridical existence of a corporation is confined within the territory of the state under whose laws it was incorporated and organized, and it has no legal status beyond such territory. Such foreign corporation may be excluded by any other state from doing business within its limits, or conditions may be imposed on the exercise of such privileges.[25] Before a foreign corporation can transact business in this country, it must first obtain a license to transact business in the Philippines, and a certificate from the appropriate government agency. If it transacts business

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[23] Comment of private respondent ITEC, Inc., p. 405, *Rollo*.

[24] Mentholatum Co., Inc., et al., *vs.* Mangaliman, et al., G.R. No. 47701, June 27, 1941, 72 Phil. 524.

[25] See Secs. 123 and 133, Corporation Code of the Philippines.

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in the Philippines without such a license, it shall not be permitted to maintain or intervene in any action, suit, or proceeding in any court or administrative agency of the Philippines, but it may be sued on any valid cause of action recognized under Philippine laws.[26]

In a long line of decisions, this Court has not altogether prohibited a foreign corporation not licensed to do business in the Philippines from suing or maintaining an action in Philippine Courts. What it seeks to prevent is a foreign corporation doing business in the Philippines without a license from gaining access to Philippine Courts.[27]

The purpose of the law in requiring that foreign corporations doing business in the Philippines be licensed to do so and that they appoint an agent for service of process is to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts. The object is not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking steps necessary to render it amenable to suit in the local courts.[28] The implication of the law is that it was never the purpose of the legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, and thus, in effect, to permit persons to avoid their contracts made with such foreign corporations.[29]

There is no exact rule or governing principle as to what constitutes "doing" or "engaging" or "transacting" business.

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[26] See Secs. 123 and 133, Corporation Code of the Philippines.

[27] Huang Lung Bank, Ltd. *vs.* Saulog, G.R. No. 73765, August 26, 1991, 210 SCRA 137.

[28] Marshall-Wells Co. *vs.* Elser and Co., G.R. No. 22015, September 1, 1924, 46 Phil. 71.

[29] Central Republic Bank and Trust Co. *vs.* Bustamante, G.R. No. 47401, March 15, 1941, 71 Phil. 359.

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Indeed, such case must be judged in the light of its peculiar circumstances, upon its peculiar facts and upon the language of the statute applicable. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized.[30]

Article 44 of the Omnibus Investments Code of 1987 defines the phrase to include:

"soliciting orders, purchases, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines, and any other act or acts that imply a continuity or commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization."

Thus, a foreign corporation with a settling agent in the Philippines which issued twelve marine policies covering different shipments to the Philippines[31] and a foreign corporation which had been collecting premiums on outstanding policies[32] were regarded as doing business here.

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[30] Mentholatum Co. Inc. *vs.* Mangaliman, *supra*.

[31] General Corporation of the Philippines *vs.* Union Insurance Society of Canton, Ltd., G.R. No. L-2684, September 14, 1950, 87 Phil. 313.

[32] Manufacturing Life Insurance Co. *vs.* Meer, G.R. L-2410, June 28, 1951, 89 Phil. 351.

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The same rule was observed relating to a foreign corporation with an "exclusive distributing agent" in the Philippines, and which has been selling its products here since 1929,[33] and a foreign corporation engaged in the business of manufacturing and selling computers worldwide, and had installed at least 26 different products in several corporations in the Philippines, and allowed its registered logo and trademark to be used and made it known that there exists a designated distributor in the Philippines.[34]

In Georg Grotjahn GMBH and Co. *vs.* Isnani,[35] it was held that the uninterrupted performance by a foreign corporation of acts pursuant to its primary purposes and functions as a regional area headquarters for its home office, qualifies such corporation as one doing business in the country.

These foregoing instances should be distinguished from a single or isolated transaction or occasional, incidental, or casual transactions, which do not come within the meaning of the law,[36] for in such case, the foreign corporation is deemed not engaged in business in the Philippines.

Where a single act or transaction, however, is not merely incidental or casual but indicates the foreign corporation's intention to do other business in the Philippines, said single act or transaction constitutes "doing" or "engaging in" or "transacting" business in the Philippines.[37]

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[33] Mentholatum Co. Inc., *vs.* Mangaliman, *supra.*

[34] Wang Laboratories, Inc. *vs.* Mendoza, *supra.*

[35] G.R. No. 109272, August 10, 1994, 235 SCRA 216.

[36] Pacific Micronesian Line Inc. *vs.* Del Rosario, G.R. No. L-7154, October 23, 1954.

[37] Far East International Import and Export Corporation *vs.* Nankai Kogyo Co., G.R. No. 13525, November 30, 1962, 6 SCRA 725.

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In determining whether a corporation does business in the Philippines or not, aside from their activities within the forum, reference may be made to the contractual agreements entered into by it with other entities in the country. Thus, in the Top-Weld case (*supra*), the foreign corporation's LICENSE AND TECHNICAL AGREEMENT and DISTRIBUTOR AGREEMENT with their local contacts were made the basis of their being regarded by this Tribunal as corporations doing business in the country. Likewise, in Merill Lynch Futures, Inc. *vs.* Court of Appeals, etc.[38] the FUTURES CONTRACT entered into by the petitioner foreign corporation weighed heavily in the court's ruling.

With the abovestated precedents in mind, we are persuaded to conclude that private respondent had been "engaged in" or "doing business" in the Philippines for some time now. This is the inevitable result after a scrutiny of the different contracts and agreements entered into by ITEC with its various business contacts in the country, particularly ASPAC and Telephone Equipment Sales and Services, Inc. (TESSI, for brevity). The latter is a local electronics firm engaged by ITEC to be its local technical representative, and to create a service center for ITEC products sold locally. Its arrangements, with these entities indicate convincingly ITEC's purpose to bring about the situation among its customers and the general public that they are dealing directly with ITEC, and that ITEC is actively engaging in business in the country.

In its Master Service Agreement[39] with TESSI, private respondent required its local technical representative to provide the employees of the technical and service center with ITEC identification cards and business cards, and to correspond only on ITEC, Inc., letterhead. TESSI personnel

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[38] G.R. No. 97816, July 24, 1992, 211 SCRA 824.

[39] *Rollo*, p. 245.

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are instructed to answer the telephone with "ITEC Technical Assistance Center.", such telephone being listed in the telephone book under the heading of ITEC Technical Assistance Center, and all calls being recorded and forwarded to ITEC on a weekly basis.

What is more, TESSI was obliged to provide ITEC with a monthly report detailing the failure and repair of ITEC products, and to requisition monthly the materials and components needed to replace stock consumed in the warranty repairs of the prior month.

A perusal of the agreements between petitioner ASPAC and the respondents shows that there are provisions which are highly restrictive in nature, such as to reduce petitioner ASPAC to a mere extension or instrument of the private respondent.

The "No Competing Product" provision of the Representative Agreement between ITEC and ASPAC provides: "The Representative shall not represent or offer for sale within the Territory any product which competes with an existing ITEC product or any product which ITEC has under active development." Likewise pertinent is the following provision: "When acting under this Agreement, REPRESENTATIVE is authorized to solicit sales within the Territory on ITEC's behalf but is authorized to bind ITEC only in its capacity as Representative and no other, and then only to specific customers and on terms and conditions expressly authorized by ITEC in writing."

When ITEC entered into the disputed contracts with ASPAC and TESSI, they were carrying out the purposes for which it was created, i.e., to market electronics and communications products. The terms and conditions of the contracts as well as ITEC's conduct indicate that they

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established within our country a continuous business, and not merely one of a temporary character.[40]

Notwithstanding such finding that ITEC is doing business in the country, petitioner is nonetheless estopped from raising this fact to bar ITEC from instituting this injunction case against it.

A foreign corporation doing business in the Philippines may sue in Philippine Courts although not authorized to do business here against a Philippine citizen or entity who had contracted with and benefited by said corporation.[41] To put it in another way, a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it. And the doctrine of estoppel to deny corporate existence applies to a foreign as well as to domestic corporations.[42] One who has dealt with a corporation of foreign origin as a corporate entity is estopped to deny its corporate existence and capacity. The principle will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes chiefly in cases where such person has received the benefits of the contract.[43]

The rule is deeply rooted in the time-honored axiom of *Commodum ex injuria sua non habere debet* — no person ought to derive any advantage of his own wrong. This is as it should be for as mandated by law, "every person must in the exercise of his rights and in the performance of his

[40] Top-Weld Manufacturing, Inc. *vs.* ECED S.A. et al., *supra*.

[41] Merrill Lynch Futures *vs.* Court of Appeals, G.R. No. 97816. July 24, 1992, 211 SCRA 824.

[42] Georg Grotjahn GMBH *vs.* Isnani (*supra*).

[43] Merrill Lynch Futures *vs.* Court of Appeals, G.R. No. 97816. July 24, 1992, citing Sherwood *vs.* Alvis, 83 Ala. 115, 3 So 307, limited and distinguished in Dudley *vs.* Collier, 84 Ala 431, 6 So. 304; Spinney *vs.* Miller, 114 Iowa 210, 86 NW 317.

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duties, act with justice, give everyone his due, and observe honesty and good faith."[44]

Concededly, corporations act through agents like directors and officers. Corporate dealings must be characterized by utmost good faith and fairness. Corporations cannot just feign ignorance of the legal rules as in most cases, they are manned by sophisticated officers with tried management skills and legal experts with practiced eye on legal problems. Each party to a corporate transaction is expected to act with utmost candor and fairness and, thereby allow a reasonable proportion between benefits and expected burdens. This is a norm which should be observed where one or the other is a foreign entity venturing in a global market.

As observed by this Court in TOP-WELD (*supra*), viz:

The parties are charged with knowledge of the existing law at the time they enter into a contract and at the time it is to become operative. (Twiehaus *v.* Rosner, 245 SW 2d 107; Hall *v.* Bucher, 227 SW 2d 98). Moreover, a person is presumed to be more knowledgeable about his own state law than his alien or foreign contemporary. In this case, the record shows that, at least, petitioner had actual knowledge of the applicability of R.A. No. 5455 at the time the contract was executed and at all times thereafter. This conclusion is compelled by the fact that the same statute is now being propounded by the petitioner to bolster its claim. We, therefore sustain the appellate court's view that "it was incumbent upon TOP-WELD to know whether or not IRTI and ECED were properly authorized to engage in business in the Philippines when they entered into the licensing and distributorship agreements." The very purpose of the law was circumvented and evaded when the petitioner entered into said agreements despite the prohibition of R.A. No. 5455. The parties in this case being equally guilty of violating

[44] Article 19, Civil Code.

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R.A. No. 5455, they are *in pari delicto*, in which case it follows as a consequence that petitioner is not entitled to the relief prayed for in this case.

The doctrine of lack of capacity to sue based on the failure to acquire a local license is based on considerations of sound public policy. The license requirement was imposed to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts. It was never intended to favor domestic corporations who enter into solitary transactions with unwary foreign firms and then repudiate their obligations simply because the latter are not licensed to do business in this country.[45]

In Antam Consolidated Inc. *vs.* Court of Appeals, et al.[46] we expressed our chagrin over this commonly used scheme of defaulting local companies which are being sued by unlicensed foreign companies not engaged in business in the Philippines to invoke the lack of capacity to sue of such foreign companies. Obviously, the same ploy is resorted to by ASPAC to prevent the injunctive action filed by ITEC to enjoin petitioner from using knowledge possibly acquired in violation of fiduciary arrangements between the parties.

By entering into the "Representative Agreement" with ITEC, Petitioner is charged with knowledge that ITEC was not licensed to engage in business activities in the country, and is thus estopped from raising in defense such incapacity of ITEC, having chosen to ignore or even presumptively take advantage of the same.

In Top-Weld, we ruled that a foreign corporation may be exempted from the license requirement in order to institute an action in our courts if its representative in the country

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[45] National Sugar Trading Corporation *vs.* Court of Appeals, et al., G.R. No. 110910, July 17, 1995, 246 SCRA 465.

[46] G.R. No. L-61523, July 31, 1986, 143 SCRA 288.

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maintained an independent status during the existence of the disputed contract. Petitioner is deemed to have acceded to such independent character when it entered into the Representative Agreement with ITEC, particularly, provision 6.2 (*supra*).

Petitioner's insistence on the dismissal of this action due to the application, or non application, of the private international law rule of forum *non conveniens* defies well-settled rules of fair play. According to petitioner, the Philippine Court has no venue to apply its discretion whether to give cognizance or not to the present action, because it has not acquired jurisdiction over the person of the plaintiff in the case, the latter allegedly having no personality to sue before Philippine Courts. This argument is misplaced because the court has already acquired jurisdiction over the plaintiff in the suit, by virtue of his filing the original complaint. And as we have already observed, petitioner is not at liberty to question plaintiff's standing to sue, having already acceded to the same by virtue of its entry into the Representative Agreement referred to earlier.

Thus, having acquired jurisdiction, it is now for the Philippine Court, based on the facts of the case, whether to give due course to the suit or dismiss it, on the principle of forum *non conveniens*.[47] Hence, the Philippine Court may refuse to assume jurisdiction in spite of its having acquired jurisdiction. Conversely, the court may assume jurisdiction over the case if it chooses to do so; provided, that the following requisites are met: 1) That the Philippine Court is one to which the parties may conveniently resort to; 2) That the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and, 3) That

[47] Salonga, Private International Law, 1979 ed., p. 49.

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Philippine Court has or is likely to have power to enforce its decision.[48]

The aforesaid requirements having been met, and in view of the court's disposition to give due course to the questioned action, the matter of the present forum not being the "most convenient" as a ground for the suit's dismissal, deserves scant consideration.

IN VIEW OF THE FOREGOING PREMISES, the instant Petition is hereby **DISMISSED**. The decision of the Court of Appeals dated June 7, 1991, upholding the RTC Order dated February 22, 1991, denying the petitioners' Motion to Dismiss, and ordering the issuance of the Writ of Preliminary Injunction, is hereby affirmed *in toto*.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and *Mendoza, JJ.*, concur.

THIRD DIVISION

[G.R. Nos. 102472-84. August 22, 1996]

JUAN SABALLA, LAILANI J. MIRANDA, NELIA I. IBARRIENTOS, HELEN G. QUIAMBAO, WILBERTO D. AMPARADO and FIDEL S. MANAOG, *petitioners, vs.* NATIONAL LABOR RELATIONS COMMISSION and CAMARINES SUR III ELECTRIC COOPERATIVE, INC., *respondents.*

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[48] *Ibid.*, p. 47.